# APPENDIX

**COMPLAINT FOR SPECIFIC PERFORMANCE, DAMAGES AND OTHER RELIEF UNDER SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT**
—Filed January 20, 1964.

COUNT ONE.

1. Plaintiffs, Walter Humphrey, Donald V. Malone, Robert Kalwat, and Marion A. Stacksteder, representatives of the class of employees of defendant E & L Transport Company, Louisville, Kentucky, are employees within the meaning of the Labor Management Relations Act, hereinafter called the Act, 61 Stat. 136, 29 U.S.C. § 141, et seq; 61 Stat. 161, 29 USC. § 142; 61 Stat. 137, 29 U.S.C. § 152.

2. The members of the aforesaid class have a common interest in the question of law and fact involved in this action. The class numbers over 100 and it is impracticable to name them all as parties plaintiff.

3. This action is brought pursuant to Section 301 of the Act, 61 Stat. 156, 29 U.S.C. § 185, to vindicate rights arising thereunder. That Section confers jurisdiction of this Court.

4. Defendant Dealers Transport Company is a corporation with offices at Fern Valley Road, Louisville, Jefferson County, Kentucky, and is incorporated in the State of Tennessee and operates a trucking business throughout the southern portion of the United States.

5. Defendant E & L Transport Company is a Michigan corporation, which, at relevant times herein, maintained a trucking terminal in Louisville, Kentucky.

6. Now and at all times material herein defendants Dealers and E & L are and have been engaged in commerce and operations affecting commerce within the meaning of the Act.

7. Defendants Dealers and E & L are employers within the meaning of this Act.

8. At all times material herein a collective bargaining contract covering a multi-employer unit of employees in the trucking industry has been in effect between National Truckaway and Driveaway Conference, a labor organization representing employees, and defendants Dealers and E & L. The trucking industry affects interstate commerce within the meaning of the Act and the aforesaid contract is governed by Section 301 of the Act.

9. Upon a grievance filed pursuant to the aforesaid contract by plaintiff, Walter Humphrey, on behalf of the employees of E & L Transport Company, the Automobile Transporters Joint Conference Committee, on or about October 18, 1961, issued a decision directing and requiring defendant Dealers to "sandwich in" employees of E & L Transport Company on Dealers' Louisville, Kentucky seniority lists. Said decision provided as follows:

> "By unanimous vote the Committee held that in accordance with Article 4 and particularly sub-sections 4 and 5 of the Automobile Carrier Truckaway Agreement, Automobile Carrier Driveaway Agreement and the Automobile Carrier City Delivery, Pull-Out, Mounting Service and Yard Agreement and Garage Rider, the Employees of E and L Transport Co. of Ky. and Dealers Transport Company at the Louisville, Kentucky Terminal shall be sandwiched in on master seniority boards using the presently constituted seniority lists and the dates contained therein at Louisville, Kentucky (past practice on layoffs and recalls shall be maintained as in the past).
>
> "1. Presently constituted terminal seniority lists shall apply for seniority purposes recognizing that the first fifty (50) men who came from Memphis, Tennessee to Louisville, Kentucky maintained their original date of hire and took their proper place on the Louisville seniority boards of Dealers

Transport Company. Men subsequently who came to Louisville from Memphis went to the bottom of the Board at Dealers Transport Company and maintained their seniority for fringe benefits only.

"2. This shall be accomplished within thirty (30) days. Copies of this decision shall be posted on the bulletin boards at both companies."

10. On November 8, 1961, C. W. Moore, an employee of defendant Dealers, filed a complaint in the Jefferson Circuit Court Chancery Branch, First Division, seeking, *inter alia,* to enjoin defendant Dealers from "carrying into effect" the aforesaid decision. On November 29, 1961, Chief Justice Robert B. Bird of the Court of Appeals of Kentucky issued an order temporarily enjoining defendant dealers "from putting into effect" the aforesaid decision. On December 15, 1961, that Court made the temporary injunction permanent. Dealers did not oppose issuance of the injunction; did not take steps to secure its dissolution and defended it in the Supreme Court of the United States.

11. On January 6, 1964, the Supreme Court of the United States held that "the decision of the committee * * * is final and binding upon the parties, just as the contract says it is" and its implementation was *not* "properly enjoined" by the Kentucky Court of Appeals. *Humphrey, et al.* v. *Moore, et al.,* Nos. 17 and 18, Oct. Term, 1963, 32 L.W. 4055, 4060.

12. The condition required by the decision to have been established within thirty (30) days of its issuance were not accomplished within that time and have still not been accomplished.

13. In consequence of defendant Dealers' non-performance of the aforesaid final decision, the members of the plaintiff class have been and are being deprived of employment and emoluments of employment to which they are entitled by law.

COUNT TWO

14. Plaintiffs reallege and incorporate by reference, as if set out verbatim herein, the allegations of paragraphs 1 through 13 hereof.

15. Prior to October, 1961, defendants Dealers and E & L conspired to and did fraudulently conceal from plaintiffs' exclusive bargaining agent the agreement whereby E & L would sell to Dealers its "secondary" authority out of Louisville, the purchase price to be a nominal sum roughly equal to the cost of effecting the transfer of authority; E & L would also sell to Dealers its authority to serve certain points in Mississippi and Louisiana; and Dealers would sell to E & L its initial authority out of Lorain, Ohio, along with certain equipment and terminal facilities. The purpose and effect of the aforesaid fraudulent concealment, was to defeat and prevent plaintiffs' exercise and enjoyment of employment rights arising from and under Article 5 of the contract referred to in paragraph 8 hereof.

16. Thereafter, defendant Dealers instigated, supported and assisted its own employees to resist, thwart and interfere with the exercise and enjoyment of plaintiffs' aforesaid rights pursuant to the decision referred to in paragraph 9 hereof.

17. Defendant Dealers acquiesced in and supported and failed and neglected to take steps legally open and available to it to set aside the injunction referred to in paragraph 10 hereof.

WHEREFORE, plaintiffs pray that this Court require defendant Dealers Transport Company:

(1) To specifically perform its obligations under the aforesaid decision, *nunc pro tunc* as of October 18, 1961;

(2) To pay damages to all members of the plaintiff class for loss of earning and other injuries suffered in consequence of defendant's failure to comply timely with the aforesaid decision;

(3) To pay plaintiffs' attorneys' fees and costs of this action; and

(4) Grant plaintiffs all other relief to which plaintiffs may be entitled, and require defendant E & L Transport Company:

(1) To pay damages to all members of the plaintiff class for loss of earnings and other injuries suffered in consequence of defendant's failure timely to comply with the aforesaid decision;

(2) To pay plaintiffs' attorneys' fees and the costs of this action; and

(3) Grant plaintiffs all other relief to which plaintiffs may be entitled.

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6(a)

# OFFICIAL GRIEVANCE REPORT
# FOR HEARING BY JOINT GRIEVANCE COMMITTEES

| | | | |
|---|---|---|---|
| Local Union | 89 | Employer | E. & L. Transport Co. |
| Employee's Name | Ray O. Lewis | Address | P. O. Box 13007 |
| Employee's Address | 1137 Garden Row | | Camp Taylor St. |
| | | City | Louisville, Kentucky |

Violation Alleged: (Contract)_____(Article)_____(Subsection)_____

State Grievance (attach necessary supporting material): On Monday, August 14, 1961, the stewards and committee, spokesman for employees of E. & L. Transport of Kentucky were advised, effective August 21, 1961 E. & L. was abolishing their Driveaway Department. The Driveaway business will be absorbed by Dealers Transport Company. Article IV, Seniority, Section 4, 5 and 6 of our Agreement establishes an employee's rights in the instances of sales, transfer, lease and assignments of work covered by our Union Contract. It is my desire first to determine if under the circumstances of absorbing business and work that has been performed by E. & L. employees detrimentally affected by the abolishment of E. & L. Driveaway Board, further, if E. & L. employees have the right to stay with the business or traffic, should they not carry with them all seniority credits for any purposes accrued during the tenture (sic) of their employment at E. & L.

Les Atterbury, Agent in Charge

Local Committee Action

Date:

Disposition:

Issue:

For Union Committee — For Operator Committee

Kentucky Joint Grievance Committee Action

No. 4565

Case No. #7 — Date of Hearing: 8/27/61

Disposition: Deadlocked to Detroit for interpretation.

/s/ Paul W. Priddy — /s/ D. E. Stovall

For Union Committee — For Operator Committee

Date referred to Central States Joint Area Committee_____

THIS FORM MUST BE USED IN FILING ALL GRIEVANCES

# AUTOMOBILE TRANSPORTERS JOINT CONFERENCE COMMITTEE

2150 Guardian Building
Detroit 26, Michigan.
WOodward 2-8590

PRE-HEARING INFORMATION — DATE RECEIVED_____

CASE NO. 49

FROM THE UNION — For Committee's Use Only.

In order that the Committee Members may be familiar with the important features in this case, will you kindly fill out the following form as completely as possible. The information submitted herein will be treated as a preliminary general statement of the Union's position.*

1. UNION NAME General Drivers Local #89
   PARTICULAR GRIEVANCE Les Atterbury
   ADDRESS 3813 Taylor Boulevard, Louisville 15, Kentucky
2. NAME OF AGENT HANDLING
3. A. NAME OF EMPLOYEE FILING COMPLAINT Ray O. Lewis
   B. CLASSIFICATION OF WORK Driveaway Driver
   C. DATE OF EMPLOYMENT 9/24/52
4. NAME OF CARRIER INVOLVED E. & L. Transport Company
   ADDRESS P. O. Box 13007 Camp Taylor Station, Louisville, Ky.
5. CIRCUMSTANCES OF THE DISPUTE (CHECK ONE)
   - A. WARNING NOTICE ☐
   - B. DISCIPLINARY TIME OFF ☐
   - C. DISCHARGE ☐
   - D. BACK PAY CLAIM ☒
   - E. OTHERS ☒
6. Date on which Company took action against employee August 21, 1961
7. Indicate that part of contract or Uniform Rules and Regulations which Employer claims employee violated Article IV, Seniority, Section 4, 5, & 6.
8. Date on which alleged violation took place August 21, 1961
9. Date on which grievance was first taken up with Management 8-14-1961

10. Exact amount of back pay, if any, claimed by aggrieved employee

11. UNION POSITION (Also include brief resume of pertinent facts—use back of sheet if necessary)

On Monday, Aug. 14, 1961 the stewards committeemen and agent, spokesman for the bargaining units employees of E. & L. Transport of Ky. were advised, effective August 21, 1961 E. & L. was abolishing the Driveaway Dept. of their operations. The Driveaway business will be absorbed by Dealers Transport Co., Article IV, Seniority, Sections 4, 5, & 6 of our Agreement establishes employees rights in the instances of sales, transfer, lease, & assignments of work covered by our Union contract.

I am requesting that E. & L. Driveaway Drivers follow or stay with the business absorbed by Dealers Transport Co. and be placed on the Dealers Transport seniority list on a dovetailed basis.

I am also requesting that other E. & L. bargaining unit classifications be similar treated and that all E. & L. employees be compensated for any financial losses substained while awaiting a decision in this matter.

12. Date on which case heard by LOCAL JOINT COMMITTEE August 23, 1961

*PREPARE IN TRIPLICATE
1st copy—Mail to Committee
2nd copy—Company Involved
3rd copy—Local Union File

/s/ Paul W. Priddy, Pres.
(FOR THE UNION)

DATE 9/2/61